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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Review of the Commission's)
Regulations Governing)
Broadcast Television)
Advertising)

MM Docket No. 95-90

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TO: The Commission

COMMENTS OF AFLAC BROADCAST GROUP, INC.

AFLAC Broadcast Group, Inc. ("AFLAC"),^{1/} by its counsel,
hereby submits its comments in response to the Commission's
Notice of Proposed Rule Making, FCC 95-226, rel. June 14, 1995,
in the above-captioned proceeding.^{2/} For the reasons set forth

^{1/} Through its affiliated entities, AFLAC owns and controls the following network-affiliated television stations: WAFB(TV) (CBS), Baton Rouge, Louisiana; WTVM (ABC), Columbus, Georgia; WTOG-TV (CBS), Savannah, Georgia; WAFF(TV) (NBC), Huntsville, Alabama; WITN-TV (NBC), Washington, North Carolina; KFVS-TV (CBS), Cape Girardeau, Missouri; and KWWL(TV) (NBC), Waterloo, Iowa.

^{2/} As indicated in AFLAC's June 5, 1995 letter to the Commission, AFLAC believes that the network/affiliate rules should not be considered in the piecemeal fashion proposed by the Commission. Instead, because of their interrelationship and the cumulative impact that changes in individual rules could have on the overall relationship between networks and affiliates (and, therefore, on the interests of the viewing public), AFLAC believes that an omnibus proceeding addressing all of the proposed changes in the network/affiliate rules would be more appropriate. Commenting parties and the Commission could, then, address the proposed changes in a comprehensive, and better, manner. Although the Commission has decided not to formally consolidate these proceedings, the fact remains that the subject matters of these proceedings is inextricably intertwined. Accordingly, AFLAC continues to believe that the Commission should not change individual network/affiliate rules via separate

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below, as well as those AFLAC has articulated in earlier Comments,^{3/} AFLAC opposes the Commission's proposals to eliminate the prohibitions on network control of station advertising rates and network representation of stations for the sale of non-network time.

AFLAC's primary concern is that elimination of these rules will give the networks undue power to dictate local programming choices to individual television stations. This concern arises from several factors: the imminent increase in ownership levels (by Congress or the Commission), the permissive ownership attribution standards the Commission now applies, and the relaxation or elimination of many of the Commission's current network/affiliate rules. AFLAC believes that the cumulative effect will be to give the networks power to overwhelm the editorial judgment of individual local broadcasters across the country as to the type of programming that is appropriate for individual communities. Local editorial judgment will be supplanted by the decisions of a handful of multi-billion-dollar

rulemaking proceedings, but should consider the impact of these and related contemplated policy and rule changes on the overall relationship and balance of power between the networks and their affiliated stations.

^{3/} See Comments of AFLAC Broadcast Group, Inc. in MM Docket 95-40, filed June 13, 1995 (filing of network affiliation agreements); Consolidated comments of AFLAC Broadcast Group, Inc. in MM Docket Nos. 91-221, 87-8, 94-150, 92-51, 87-154, filed May 17, 1995 (broadcast ownership and attribution).

corporations in New York and Los Angeles, effectively eliminating the community-based system of local broadcasting created by the Communications Act.

A dramatic change in the existing balance of power between the networks and their affiliates already seems inevitable. As AFLAC stated in its Consolidated Comments in the broadcast ownership and attribution proceedings, any significant increase in the national ownership limits for television stations will upset the current balance of power between the television networks and their affiliates by permitting the networks to own a higher percentage of their distribution chain. It appears virtually certain that either Congress or the Commission will permit the national ownership cap for television stations to increase to at least 35% of the national audience. As the networks are permitted to buy more of their affiliated stations, they will purchase larger stations in larger markets. These stations will, then, be taken out of play in the ongoing network-affiliate negotiations on critical issues such as program quality, clearance or preemption of network programs, and network compensation.

The planned phase out of the financial interest/syndication rules and the Prime Time Access Rule will further increase the networks' relative power. They also make it possible for the networks to combine with large program suppliers -- for example,

The Walt Disney Company's recently announced purchase of ABC/Capital Cities. Such combinations will further erode the affiliates' remaining power. The ABC/Disney combination will result in a vertically integrated entity that will provide Disney with a television distribution chain for its programming and guarantee ABC/Cap Cities a source of high-quality programming. AFLAC believes that the inevitable consequence will be enormous pressures on ABC affiliates to clear ABC/Disney network programming.

It is against this backdrop, that shows the economic power of the networks vis-a-vis their affiliates steadily on the rise, that AFLAC believes it is important for the Commission to maintain the existing regulatory protections for affiliates provided by the network-affiliate rules. Specifically, AFLAC believes that the Commission must protect the existing right and responsibility of individual licensees to make individual judgments about what programming is appropriate for their particular communities.

I. THE COMMISSION MUST MAINTAIN A STATION'S RIGHT TO REJECT NETWORK PROGRAMMING TO PROTECTS A STATION'S ABILITY TO MAKE PROGRAMMING CHOICES BEST SUITED TO ITS COMMUNITY.

The primary regulatory safeguard for this right is the "right to reject" rule (47 U.S.C. § 73.658(e)), which now protects the ability of individual stations to refuse to carry

network programs and to substitute other programs that the station believes are more suitable for its audience.^{4/} AFLAC supports retention of the "right to reject" rule in its current form and, at the appropriate time, intends to file comments with the Commission supporting that position.

However, even maintaining the "right to reject" rule may not be enough to forestall the erosion of an affiliate's ability to decline to carry particular network programming in light of other possible regulatory changes. AFLAC believes that two of the changes proposed in this proceeding -- the elimination of the rules regarding network "reps" and network/advertising rates -- would undercut the independence of the programming decisions that local broadcasters now make.

II. ELIMINATION OF THE NETWORK "REP" AND NETWORK/ADVERTISING RATES RULES WOULD NOT SERVE THE PUBLIC INTEREST BECAUSE IT WOULD ENCROACH UPON A STATION'S ABILITY TO CHOOSE PROGRAMMING THAT REFLECTS THE INTERESTS OF ITS LOCAL COMMUNITY.

Even if the "right to reject" rule is maintained in its current form, the elimination of the network rep rule would unduly intrude into and impair the editorial discretion now

^{4/} Indeed, even with the "right to reject" rule, the networks are insisting on provisions in network affiliation agreements that significantly restrict the ability of affiliated stations to reject network programming. See, e.g., Consolidated Comments of AFLAC Broadcast Group, Inc. in MM Docket No. 92-221, et al., and MM Docket No. 95-40.

exercised by local broadcasters by creating a strong economic disincentive to preempt the network. Without the network rep rule, network rep firms could represent non-network-owned stations concerning the sale of non-network advertising time. Although this may seem innocuous, what happens when a local station decides to preempt network programming and carry the Billy Graham Crusade or a local high school football game? In such cases, will a network-owned rep firm really try to attract advertising dollars for a local station? AFLAC submits that the answer clearly is "no." The network-owned rep firm would be asked to sell against its network owner, thereby creating a fundamental conflict of interest. AFLAC believes that the likely result would be either an outright refusal of the network rep firm to sell advertising for such a program or only a half-hearted attempt to do so. Either way, the inevitable consequence would be to make a local broadcaster's decision to reject or preempt network programming economically unattractive.

Moreover, although elimination of the network rep rule would not require stations to be represented by a network-owned rep firm, it would so weaken the prospects for survival of independent rep firms that, ultimately, network-owned rep firms would be the only realistic alternative in many television markets. The expected Congressional increase in national ownership limits will permit the networks to increase their station holdings -- particularly in the larger television markets

-- and will see those stations switch from independent rep firms to network-owned rep firms. The dollar value of national business lost by independent rep firms will be so significant that some firms will not survive. The smaller pool will increase the already-high economic pressures on remaining independent rep firms and, undoubtedly, will cause some of them to go out of business or to merge, further decreasing the pool. Add to this a few defections by non-network-owned stations for unrelated reasons, and there may be no surviving independent rep firms. The proposed elimination of the network rep rule will accelerate this trend.

Under any scenario, the result appears to be a diminishing number of rep firm choices. Thus, stations in many smaller and medium-sized markets would likely be left with no alternative except to be represented by a network-owned firm -- even with the attendant disadvantages outlined above. In sum, preservation of the current network rep rule is critical to protect the ability of a station to be represented by an independent rep firm and, thus, to maintain independent control over its programming.

Eliminating the network rep rule also would pose a conflict of interest in local programming decisions. An essential function of rep firms is to assist stations in selecting, scheduling and selling programming, including programming that preempts network programming. This would create an inherent

conflict of interest for a network rep firm, which would have every incentive to promote network programming over network-preemptive programming. The hard truth is that stations -- whether or not affiliated -- pay high regard to the advice of their rep firm because the rep firm is able to survey the programming picture nationwide before making programming recommendations to individual stations or groups. Yet, if the network/affiliate rules are relaxed, as the Commission proposes, few, if any, independent rep firms will remain. Affiliated stations may have no alternative to placing themselves in a situation where they cannot obtain programming advice and procurement assistance that considers the best interest of the station when the interests of the station and the rep firm's network diverge. The likely result will be that fewer affiliated stations will take the risk to preempt network programming. This inevitably diminishes the legally mandated role of local station as public trustee to select programming that addresses the problems, needs and interests of its local community.

AFLAC also is concerned that the elimination of the network/advertising rates rule would permit networks to encroach upon the affiliates' ability to reject network programming. If the rule were eliminated, a network might seek to make it economically unattractive to preempt the network by insisting that advertising rates for programs broadcast in lieu of network programming be held to certain limits -- for example, a

percentage of the compensation that the station normally would receive for the network program scheduled for that time period. If the current restriction were eliminated, a network could insist on such a provision as part of the network affiliation agreement. Obviously, such a provision would provide a strong incentive to stations not to preempt network programming and, thus, would effectively limit the editorial discretion of local broadcasters.

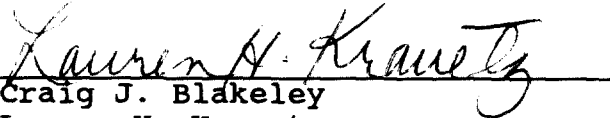
CONCLUSION

As a consequence of various changes that have been made or are now being considered by Congress and the Commission, the economic power of the networks, and their relative power vis-a-vis their affiliates, is increasing rapidly. In such circumstances, it is extremely important to maintain the rules that safeguard the editorial judgment of local broadcasters to decide what programming is appropriate for their communities. AFLAC believes that elimination of the network rep and network/advertising rates rules would enable the networks to bring significant economic pressure to bear on local stations to carry network programming in lieu of non-network programming that addresses important local issues. Such an erosion in the ability

of local broadcasters to serve their communities plainly would not be in the public interest. Accordingly, AFLAC urges the Commission to retain these rules in their current form.

Respectfully submitted,

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